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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DAN DEFOREST, individually and on ) Case No. 8:18-cv-01431-JLS-JDE  
behalf of all others similarly situated, )  
Plaintiff, ) **DECLARATION OF TODD M.**  
vs. ) **FRIEDMAN**  
PARADISE CRUISE LINE )  
OPERATOR LTD. INC. d/b/a )  
BAHAMA PARADISE CRUISE LINE )  
d/b/a ROYAL EMPRESS CRUISES; )  
CLASSICA CRUISE OPERATOR )  
LTD. INC. d/b/a BAHAMA )  
PARADISE CRUISE LINE d/b/a )  
ROYAL EMPRESS CRUISES; )  
BAHAMA PARADISE CRUISE LINE )  
d/b/a ROYAL EMPRESS CRUISES )  
and DOES 1 through 10, inclusive, and )  
each of them, )  
Defendants. )

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2 **DECLARATION OF TODD M. FRIEDMAN**

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4 I, Todd. M. Friedman, declare:

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- 1 I am one of the attorneys for the Plaintiff DAN DEFOREST (“Plaintiff”) in the above-captioned matter (the “Action”). I am an attorney licensed to practice law in the State of California since 2001, the State of Illinois since 2002, and the State of Pennsylvania since 2011. I have been continuously licensed in California since 2001, Illinois since 2002, and Pennsylvania since 2011, and am in good standing with the California State Bar, Illinois State Bar, and Pennsylvania State Bar. I have litigated cases in both state and federal courts in California and Illinois. I am also admitted in every Federal district in California and have handled federal litigation in the federal districts of California.
- 2 The declaration is based upon my personal knowledge, except where expressly noted otherwise.
- 3 Per Section 19 of the Court’s Standing Order, I am writing to address why the factors identified in *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989) favor dismissal of the Action on an individual basis as to Defendants, PARADISE CRUISE LINE OPERATOR LTD. INC. d/b/a BAHAMA PARADISE CRUISE LINE d/b/a ROYAL EMPRESS CRUISES; CLASSICA CRUISE OPERATOR LTD. INC. d/b/a BAHAMA PARADISE CRUISE LINE d/b/a ROYAL EMPRESS CRUISES; BAHAMA PARADISE CRUISE LINE d/b/a ROYAL EMPRESS CRUISES (collectively, “Defendants”) and why notice need not be provided to the putative class. I take these matters very seriously, as do the members of my firm, and I submit this Declaration to assure the Court of

1 my office's compliance with the *Diaz* factors in seeking an individual  
2 dismissal.

3 **I. COUNSEL'S EXPERIENCE**

4 4. As one of the main plaintiff litigators of consumer rights cases in Southern  
5 California, I have been requested to and have made regular presentations to  
6 community organizations regarding these matters.

7 5. I have extensive experience prosecuting cases related to consumer issues.  
8 My firm, The Law Offices of Todd M. Friedman, P.C., in which I am a  
9 principal, has litigated over 1000 individual based consumer cases and  
10 litigated over 100 consumer class actions. These class actions were litigated  
11 in federal courts in California, as well as California State Courts.  
12 Approximately 100% percent of my practice concerns consumer litigation  
13 in general.

14 6. Over the past four years, The Law Offices of Todd M. Friedman has served  
15 as plaintiff's counsel in at least the following class action cases involving  
16 various class actions claims consumer rights claims, where a settlement was  
17 reached on a class-wide basis, and have achieved over \$100,000,000 in  
18 class-wide relief for consumers

19 a. *Dancer v. L.A. Times*, BC472154 (L.A. Superior Court) (common  
20 fund class-wide settlement of \$3 million to \$4 million granted final  
21 approval);

22 b. *Couser v. Comenity Bank*, 3:12-cv-02484-MMA-BGS (S.D. Cal.)  
23 (\$8.475 million class-wide settlement achieved and granted final  
24 approval);

25 c. *Stemple v. QC Financial Services Group of California, Inc.*, 3:12-cv-  
26 01997-CAB-WVG (S.D. Cal.) (certified class achieved by motion,  
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1 and subsequent class-wide settlement of \$1.5 million achieved, with  
2 final approval granted);

3 d. *Couser v. Apria Healthcare, Inc.* 8:13-cv-00035-JVS-RNB (C.D.  
4 Cal.) (common fund class-wide settlement of \$400,000 to \$750,000,  
5 granted final approval);  
6 e. *Abdeljalil v. General Electric Capital Corporation*, 12-CV-02078-  
7 IEG-RBB (S.D. Cal.) (class-wide settlement with common fund of  
8 \$6.125 million achieved, preliminary approval granted, final approval  
9 pending);  
10 f. *Fox v. Asset Acceptance*, 3:13-CV-00922-DMS-BGS (S.D. Cal.)  
11 (common fund of \$1 million in class-wide relief achieved, granted  
12 final approval);  
13 g. *Friedman v. LAC Basketball Club, Inc.*, 2:13-cv-00818-CBM-AN  
14 (C.D. Cal.) (class-wide settlement achieved and granted final  
15 approval);  
16 h. *Gerich et. al. v. Chase Bank USA et. al.* Case No 1:12-cv-5510 (N.D.  
17 Ill.) (class-wide settlement of \$34 million, granted final approval);  
18 i. *Than Zaw v Nelnet, Inc.*, Penal Code § 632 class – (Achieved class-  
19 wide settlement of \$1,188,110, granted final approval of court);  
20 j. *Medeiros v HSBC*, (common fund settlement of between \$4.5 million  
21 and \$6.5 million achieved, preliminary approval granted);  
22 k. *Ann Fox v. Spectrum Club Holding Company et al.*, Case No. 2:14-  
23 CV-06766-PSG-FFMx (class-wide settlement, preliminary approval  
24 granted);  
25 l. *Sayan Aboudi v. T-Mobile USA, Inc.*, Case No. 3:12-cv-02169-BTM-  
26 NLS (class-wide settlement in TCPA case, with common fund of \$2.5  
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1 million to \$5 million, with average per class member payment of  
2 \$500, final approval granted);

3 m. *Andrew Roseman v. BGASC, LLC, et. al.*, Case No. EDCV 15-1100-  
4 VAP (SPx) (C.D. Cal.) (class-wide relief achieved, final approval  
5 granted);  
6 n. *Everardo Gonzalez v The Scotts Company*, Case No. BC577875,  
7 Consolidated with Case No: BC570350 (LASC) (class-wide  
8 settlement of \$925,000 in wage and hour class action on behalf of  
9 approximately 603 employees achieved, final approval granted);  
10 o. *Payton v Luxe Valet*, Case No. BC588462 (LASC) (class-wide  
11 settlement in wage and hour independent contractor misclassification  
12 class action, on behalf of 1,800 employees, settled for \$2.4 million,  
13 final approval granted);  
14 p. *Shelby v Two Jinn, Inc.*, Case No. 2:15-cv-03794-AB-GJS (C.D. Cal.)  
15 (EFTA class action involving no cognizable actual damages, with net  
16 worth of company of \$25 million, settled for non-reversionary  
17 common fund of \$457,000, despite liability under 15 U.S. Code §  
18 1693m(a) likely being only \$250,000; final approval granted, zero  
19 objections);  
20 q. *Couser v Dish One Satellite*, Case No. 5:15-cv-02218-CBM-DTB  
21 (C.D. Cal.) (TCPA class action, final approval granted);  
22 r. *Couser v Dish One Satellite*, Case No. RIC 1603185 (Riverside S.C.)  
23 (Penal Code 632 class action, preliminary approval granted);  
24 s. *De La Paz v Accurate Courier NCA LLC*, Case No. 16CV00555  
25 (Santa Cruz County Superior Court) (PAGA and Labor Code class  
26 action, final approval granted);  
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- t. *Ross v Zurixx LLC*, Case No. 34-2016-00190874 (Sacramento SC) (UCL, FAL and CLRA class action alleging false advertising for real estate educational courses, non-reversionary common fund settlement for over \$600 per class member, final approval granted);
- u. *Eubanks v Terminix International, Inc.*, Case No. 3:15-cv-00145-WQH-JMA (PAGA settlement reached in wage and hour action on behalf of pest control technicians, preliminary approval pending);
- v. *Jonathan Weisberg, v. HD Supply, Inc.*, Case No. 15-cv-08248-FMO (MRWx) (class-wide settlement in TCPA class action, settled for \$1.225 million, final approval granted);
- w. *Miler v Pacific Auto Wash Partners*, Case No. 30-2015-00813013-CU-OE-CXC (wage and hour class action, final approval granted);
- x. *Sonia Barrientos v Law Office of Jeffrey H. Jordan*, Case No. 2:15-cv-06282-JAK-GJS (FDCPA/RFDCPA letter class action, settled on class wide basis, final approval granted);
- y. *Tahmasian v Midway Rent A Car*, Case No. 30-2015-00813013-CU-OE-CXC (LASC) (PAGA and Labor Code class action, final approval granted);
- z. *Craig Cunningham v Lexington Law Firm*, Case No. 1:17-cv-00087-EJF (N.D. UT) (TCPA class action MDL involving solicitation prerecorded voice calls made by a third party, vicarious liability alleged, preliminary approval pending).
- aa. *Sheena Raffin v Medicredit, Inc. et. al.*, Case No. 2:15-cv-04912-MWF-PJW (C.D. Cal.) (Cal. Penal Code § 632.7 class action certified by Hon. George H. King Ret. under Rule 23(b)(2) and (b)(3) by contested motion on behalf of 11,000 class members whose calls were

1 recorded without knowledge or consent, settled for \$5 million, final  
2 approval granted);

3 bb. *Fernandez v Reliance Home Services, Inc.* Case No. BC607572 Los  
4 Angeles Superior Court (wage and hour plus PAGA class action, Final  
5 approval granted);

6 cc. *In RE HP Firmware Update Litigation*, Case No. 5:16-cv-05820-EJD-  
7 SVK (N.D. Cal.) (co-lead counsel in consolidated nationwide class  
8 action for invasion of privacy, false advertising and unfair competition  
9 claims surrounding HP's firmware updates on third party ink,  
10 injunctive relief plus \$1.5 million class fund, preliminary approval  
11 granted);

12 dd. *Anne Wolf v Hewlett Packard Company*, Case No. 5:15-cv-01221-  
13 TJH-GJS (C.D. Cal.) (CLRA class action certified by contested  
14 motion on behalf of tens of thousands of class members who  
15 purchased printer that was falsely advertised to include Smart Install  
16 feature, settled on a wider multi-state, multi-product basis,  
17 preliminary approval granted, final approval pending);

18 ee. *Jaylinda Girardot et al v. Bail Hotline Bail Bonds, Inc.*, Case No.  
19 FCS048335 Solano County Superior Court (wage and hour plus  
20 PAGA class action, final approval granted);

21 ff. *Ryoo Dental, Inc. v OCO Biomedical, Inc.*, Case No. 8:16-cv-01626-  
22 DOC-KES (TCPA fax blast class action, settled on class wide basis,  
23 final approval granted);

24 gg. *Wondra Curtis v The Anthem Companies, Inc.*, Case No. 8:16-cv-  
25 01654-DOC-JCG (wage and hour class action for off the clock work,  
26 settled on class wide basis, final approval granted);

1           hh. *Aliav v Sunset Eats, LLC*, Case No. BC655401 Los Angeles Superior  
2           Court (false advertising class action on behalf of approximately  
3           10,000 class members, settled on class wide basis; preliminary  
4           approval pending);  
5           ii. *Sheena Raffin v Medicredit, Inc. et. al.*, Case No. 2:15-cv-04912-  
6           MWF-PJW (C.D. Cal.) (Cal. Penal Code § 632.7 class action certified  
7           by Hon. George H. King Ret. under Rule 23(b)(2) and (b)(3) by  
8           contested motion on behalf of 11,000 class members whose calls were  
9           recorded without knowledge or consent, settled for \$5 million, final  
10           approval granted);  
11           jj. *Alfred Zaklit, et. al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-  
12           02190-CAS-KK (C.D. Cal.) (Cal. Penal Code § 632.7 class action  
13           certified by contested motion under Rule 23(b)(2) and (b)(3) on behalf  
14           of over 40,000 class members whose calls were recorded without  
15           knowledge or consent, preliminary approval pending);  
16           kk. *Mark Silva v Olson and Co. Steel* Case No. 17CV001045 Contra  
17           Costa County Superior Court (wage and hour class action settled on  
18           behalf of 563 class members, preliminary approval pending); and  
19           ll. *Richards v CoreCivic of Tennessee, LLC*, Case No. 1:17-cv-01094-  
20           LJO-JLT (E.D. Cal.) (wage and hour class action settled for  
21           approximately \$3 million, preliminary approval pending).  
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23           7. My firm is also currently acting as class counsel in the following cases which  
24           were certified as class actions under Rule 23 by contested motion:  
25           a. *Anne Wolf v Hewlett Packard Company*, Case No. 5:15-cv-01221-  
26           TJH-GJS (C.D. Cal.) (CLRA class action certified by contested  
27           motion on behalf of tens of thousands of class members who  
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1 purchased printer that was falsely advertised to include Smart Install  
2 feature);

3 **b.** *Sheena Raffin v Medicredit, Inc. et. al.*, Case No. 2:15-cv-04912-  
4 MWF-PJW (C.D. Cal.) (Cal. Penal Code § 632.7 class action  
5 certified by Hon. George H. King Ret. under Rule 23(b)(2) and (b)(3)  
6 on behalf of class members whose calls were recorded without  
7 knowledge or consent);

8 **c.** *Caldera v. American Medical Collection Association*, (C.D. Cal.)  
9 Case No. 2:16-cv-00381-CBM-AJW (TCPA class action on behalf  
10 of 30,000-100,000 class members, certified by contested motion)  
11 **d.** *Alfred Zaklit, et. al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-  
12 02190-CAS-KK (C.D. Cal.) Cal. Penal Code § 632.7 class action  
13 certified under Rule 23(b)(2) and (b)(3) on behalf of class members  
14 whose calls were recorded without knowledge or consent);  
15 **e.** *D'Angelo Santana vs Rady Children's Hospital*, Case No. 37-2014-  
16 00022411-CU-MT-CTL (San Diego Superior Court) Confidentiality  
17 of Medical Information Act, Cal. Civ. Code § 56 *et seq.*;  
18 **f.** *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-  
19 DDP-E (C.D. Cal.) (TCPA class action certified on behalf of  
20 approximately 1,000,000 class members under Rule 23(b)(2) and  
21 23(b)(3)); and  
22 **g.** *Rodriguez v. Experian Information Solutions, Inc. et. al.* Case No.  
23 2:15-cv-01224-RAJ (W.D. Wash.) (FCRA class action for improper  
24 credit pulls; certified under Rule 23)  
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26 8. I take great pride in helping consumers by bringing class action cases, and  
27 feel that this is an incredibly important mechanism available to litigants, to  
28 ensure that justice for consumers can be achieved on a wide-scale basis. I

1 have dedicated my entire career to helping consumers, and do not take my  
2 duties to putative class members, nor to the tribunal, lightly.

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4 **III. DISMISSAL OF THE CASE AT BAR – COUNSEL’S DILIGENCE**

5 9. The case at bar was brought as a putative class action pursuant to violations  
6 of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et. seq.  
7 (“TCPA”), seeking damages of between \$500 and \$1,500 per call placed.

8 10. As background, my client allege that Defendant placed calls using an  
9 automated telephone dialing system to Plaintiff’s cellular telephones in an  
10 attempt to sell its services. In or around July 2017, Plaintiff Deforest alleges  
11 he received numerous telephone calls to his cellular telephone from  
12 Defendant. In discussions with its counsel, Defendant disputed the  
13 allegations.

14 11. Plaintiff filed the initial Complaint on August 18, 2018. Due to a processing  
15 error by my office’s process server, the complaint took some time to be  
16 served. Once Defendant was served, the parties engaged in early  
17 discussions regarding the calls at issue. Defendant denied that it placed the  
18 calls at issue in the case. Plaintiff’s pre-filing diligence, documentation, and  
19 work product suggested that a third party entity placed the calls on  
20 Defendant’s behalf, using Defendant’s trade name and selling Defendant’s  
21 services. After an informational exchange, it became clear that determining  
22 the identity of the third party would be very challenging, because Defendant  
23 asserted that it was not their agent, and did not know the identity of the  
24 company. This raised a certification challenge because there would be no  
25 readily apparent manner in which to obtain an outbound dial list, with which  
26 class members could be identified through reverse lookups, or numerosity  
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1 standards could be met under Rule 23. There was also a potential merits  
2 issue relating to the issue of vicarious liability, which Defendant  
3 vehemently opposed.

4 12.In light of these risks, there was no fruitful purpose served to the Class in  
5 pursuing this case to Class Certification and seeking a Class Judgment that  
6 may never be satisfied. To the extent any Class member wants to pursue  
7 their own claims, they will have four (4) years from the date of the dismissal  
8 to do so. And more importantly, Defendant is in business and operating,  
9 which puts an individual Class member in a better position to obtain any  
10 recovery than my office would be in to obtain certification in light of these  
11 circumstances. At least by dismissing individually, an individual who may  
12 be particularly upset at Defendant still has the option of suing them and  
13 recovering.

14 15. Plaintiff DeForest received at least one call.

16 14. Plaintiffs reached out to Defendant as to this issue, and after extensive  
17 discussions and much deliberation, the Parties agreed to dismiss this matter  
18 on an individual basis with prejudice as to Plaintiffs. My office has lodged  
19 the Parties' written agreement in this regard under seal contemporaneously  
20 with this declaration for the Court's review.

21  
22 **IV. THE DIAZ STANDARDS**

23 15. Under *Diaz*, the Court must assess potential prejudice to the putative class  
24 members from: (1) "possible reliance on the filing of the action if they are  
25 likely to know of it either because of publicity or other circumstances"; (2)  
26 "lack of adequate time for class members to file other actions, because of a  
27 rapidly approaching statute of limitations"; and (3) "any settlement or

concession of class interests made by the class representative or counsel in order to further their own interests.” *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1409 (9<sup>th</sup> Cir. 1989).

16. As to the first factor, Plaintiff has not engaged in any publicity with regards to this Action, has not been contacted by any individuals with claims the same or similar to that of the putative Class, and is unaware of any other publicity regarding this Action.

17. As to the second factor, the Class portion of the Complaint concerning the Telephone Consumer Protection Act has a four year statute of limitations pursuant to 47 U.S.C. § 227 *et. seq.* This Action concerns calling practices in 2017, such that the Statute of Limitations would not toll until 2021, thus there is no rapidly approaching statute of limitations problem.

18. As to the third factor, Plaintiff is seeking to dismiss only his individual claims with prejudice, and the class claims without prejudice. Thus, there is not a settlement or concession of class interests in the furthering of Plaintiff’s interests, as individual putative Class members continue to retain the right to pursue claims against Defendant.

19. Further, as to the collusive or prejudicial concern put forth by the Court in *Diaz*, it further noted that “[a]bsent any indication that *these* plaintiffs actually appended class allegations in an attempt to get favorable individual settlements, there is no reason to require notice here as a deterrent to hypothetical abusive plaintiffs.” *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1409 (9<sup>th</sup> Cir. 1989). Plaintiff originally filed this matter as a class action because of Plaintiff’s belief that the alleged conduct of Defendant about which Plaintiff complained likely occurred with respect to individuals who were similarly situated to Plaintiff. Indeed, Plaintiff is actively pursuing class certification with a reply in support of class

1 certification due on January 14, 2019 in the case of Ryan McCurley and  
2 Dan Deforest v. Royal Seas Cruises, Inc. Case No. 17-CV-986 BAS(AGS)  
3 (CA. S.D.). My office is highly confident that we will be successful in  
4 certifying the class in that action. There was no attempt to “append” class  
5 allegations to obtain a favorable individual settlement.

6 Accordingly, the three factors in this matter do not implicate the purposes  
7 underlying the notice requirement of Fed. R. Civ. P. 23(e) in a pre-  
8 certification dismissal.

9 **IV. CLOSING COMMENTS**

10 21. As stated previously, I take my duties as a licensed attorney and as class  
11 counsel very seriously. Each and every case that is brought by my office as  
12 a class action is initially brought with the intention of pursuing the matter  
13 through the class certification stage, and on behalf of the alleged putative  
14 class of consumers or employees for which it is brought. I take great pride  
15 in the highly favorable results that my firm has achieved in its short time  
16 litigating class action cases.

17 22. With that being said, there are significant challenges to consumer class  
18 action litigation, including, but certainly not limited to those described  
19 above. Often times, these challenges cannot be uncovered, or are not readily  
20 apparent prior to the filing of a case.

21  
22 I declare under penalty of perjury that the foregoing is true and correct.  
23 Executed on January 7, 2019, pursuant to the laws of the United States and the State  
24 of California at Woodland Hills, California.

25  
26 /s/ Todd M. Friedman  
27 Todd M. Friedman  
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